No. 88-1192

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALVIE B. GRAHAM
Petitioner,

vs.

JUDGE J. WARREN BETTIS
ET. AL.,
Respondent.

BRIEF IN REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

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PARTIES TO THE PROCEEDING IN THE OHIO SUPREME COURT AND THE SEVENTH DISTRICT CCURT OF APPEALS OF OHIO

1. Alvie Graham
   Plaintiff-Appellant

2. J. Warren Bettis, Judge of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee

3. Carl Stacey, Clerk of Court of the Columbiana County, Ohio, Court of Common Pleas
   Defendant-Appellee

4. Larry Dickey, Esq.
   Defendant-Appellee

5. Eugene Smith, Esq.
   Defendant-Appellee

6. Bertha I. Zahorsky
   Defendant-Appellee

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING IN THE OHIO SUPREME COURT AND THE SEVENTH DISTRICT COURT OF APPEALS OF OHIO i

TABLE OF AUTHORITIES iii

SUMMARY OF ARGUMENTS 1

ARGUMENTS 1

I. Reasons for sustaining the Writ of Certiorari 1

II. The Petitioner has abundantly demonstrated important federal questions compelling allowance of a Writ of Certiorari 4

CONCLUSION 8

TABLE OF AUTHORITIES

PAGE

A. CASES:

McDonald v. Mabee, U.S. 90 (1917).....1

Adam v. Saenger, 303 U.S. 59 (1938) 2

Cardinale v. Louisiana, 394 U.S. 437 (1969). 2

B. FEDERAL STATUTES:

28 U.S.C. 1257 1

C. FEDERAL RULES OF CIVIL PROCEDURE:

Rule 37 1

D. RULES OF THE SUPREME COURT OF THE UNITED STATES:

Rule 17.1 1

Rule 21.1 (h) 2

Rule 33.1 (d) 11

Rule 33.2 (b)(2) 11

E. OHIO REVIESED CODE:

Section 2301.01 6

F. OHIO RULES OF CIVIL PROCEDUE:

Rule 37 (D) 6

G. OHIO STATUTES:

22 Ohio Jur 3d § 59 6

SUMMARY OF ARGUMENTS

This court is with jurisdiction under 28 U.S.C. § 1257 (3) to review this case on a writ of certiorari inasmuch as Petitioner has repeatedly, whether it be expressed or implied, presented a claim on federal questions in the state courts below, and Petitioner has definitely presented more than substantial federal questions throughout his petition. Further, the petition cites McDonald v. Mabee U.S. 90 (1917), an important federal question which first came into the state courts below on September 30, 1982. This Federal question arises out of Federal Rule 37, which would commend review by this Court under Supreme Court rule 17.1.

ARGUMENT - REASONS FOR SUSTAINING THE WRIT OF CERTIORARI

1. THIS Court has jurisdiction to issue the Requested Writ of Certiorari

Counsel of record for respondents, Mr. Eklund and Mr. Pfau, as in all other cases in the state courts below, has tried to provide this court an understanding that this petitioner is a stumbling and fumbling idiot. In Adam v. Saenger, 303 U.S. 57 (1938) [Eklund's case law] at page 61, is found the fact that this court granted certiorari and properly directed it to the highest court of the state in which a judgment could be had. Mr. Eklund predisposes that this petitioner erred in the proper direction for the writ when in actuality it was the Clerk of this Supreme Court who directed, upon further checking, this petitioner to the Ohio Supreme Court. Therefore, making Petitioner's petition proper and being supported in Adam v. Saenger, supra.

Mr. Eklund cites Cardinale v. Louisiana, 394 U.S. 437 (1969) and states that petitioner has failed to follow the requirements of Supreme Court Rule 21.1 (h). Petitioner's petition which clearly demonstrates that not one but two federal cases, with the same federal

question were brought out on September 30, 1982 in the Court of Common Pleas. Mr. Pfau brings up an interesting, in not controversial, hearing that being of May 29, 1981. This in actuality was not a hearing, but a "Kangaroo Court" [See affidavits, I.P.-12] for which this respondent was hired and paid nine hundred dollars to perfect said appeal. Yet Mr. Pfau submits to this court that this Petitioner failed to appeal the contempt finding when his client was employed for the very same purpose. This respondent saw fit, for whatever reasons, to frivor away ten months of this petitioner's time. Here again, Mr. Pfau submits that this petitioner untimely filed the Ohio Civil Rule 60 (B) when it was also the duty of his client to file said motion. This brings into full view the question of the Fourteenth Amendment right that Respondents are at a loss to understand.

Mr. Eklund further states that a Fourteenth Amendment issue is not timely. The actions of Judge Bettis on October 30, 1981 of disqualifing the Court from any further hearings in this

action, along with the actions then on July 29, 1982 of Judge Kennedy, the actions of the Supreme Court of Ohio in failing to follow with state procedural rules in not complying with the Mandamus to supply this petitioner with the decision of the Chief Justice of that Supreme Court denied this Petitioner "equal protection of the law" under the law, as is guaranteed by the Fourteenth Amendment. Further, the actions that Judge Kennedy instituted and the subsequent dismissal of this petitioner's cause in the eight years of litigation has deprived this petitioner the liberties of a freeman. These actions have dangerously impaired this petitioner's health and further, through the blantent violation of the Fourteenth Amendment, leaves this Petitioner only one legal remedy,this Court of Last Resort.

II. THE Petitioner has Abundantly Demonstrated Important Federal Questions Compelling Allowance of a Writ of Certiorari

A closer review of the two underlying state court cases shows that enumerous questions of federal law have been presented in the state courts below; these cases involved not only the application of state procedural law, but constitutional and federal questions.

With respect to 80-CIV-1000, and the State Appellate Court that inasmuch as the lower court had issued a joint and identical decision on November 5, 1984 in 80-CIV-1000, a 60(B) Motion and 82-CIV-695, a suit for damages. See transcript - Opinion of Court, pages 92-93 of 80-CIV-1000 in which context pages 59-67 are raised constitutional rights, and pages 67-68 of 82-CIV-695. At the hearing the sitting judge clearly violated state procedural law, in that ten witnesses were subpeonaed by this petitioner and all failed to appear. This judge failed to issue appropriate bench warrnats for these subpeonaed witnesses and to call a continuance until all witnesses were present. Yet Mr. Eklund claims, before this Court, that this Petitioner deprived the common pleas court

jurisdiction to rule on the 60(B) Motion. The State Appellate Court, appealled to properly inasmuch as the lower court twice violated state procedural law , was again violating constitutional rights and had rendered its decision on both causes on November 5, 1984 and this petitioner filed his Notice of Appeal on November 30, 1984.

With respect to Ohio Rule of Civil Procedure 37 (D), respondents still claimed jurisdiction over this petitioner. This petitioner maintains that on October 30, 1981, Judge J. Warren Bettis disqualified the "court" from any further hearings in this action [as was published in the local newspapers on Nov. 3, 1983] Journal 254, page 76. His action that day did not merely disqualify himself, but the Court, as is established in Ohio Revised Code, section 2301.01, and that Judge Kennedy usurped his authority by convening court on July 28, 1982 with regards to this petitioner's cause in that there was no court of jurisdiction 22 Ohio Jur 3d § 59. Judge Kennedy's action of

dismissing himself from the cause had no actual bearing whatsoever, in that the State Courts below overlooked the fact of the Judgment Entry and Journal Entry of October 30, 1981 in 80-CIV-1000 and found that the trial court retained jurisdiction.

CONCLUSION

The original cause of action, a divorce proceeding, and the subsequent standing decision of that court being not only biased, but contrary to law, coupled along with the actions of Judge Bettis on May 29, 1981 and the subsequent actions of Mr. Smith, to take personally acquired knowledge of the cause for the actions of May 29, 1981 by Judge Bettis, continued to deprive this Petitioner the due process of law. The underlying question that has been totally devoid of judgment by all state courts below is this:

> What law, be it constitutional, federal or state, allows one officer of a court law to acqure full knowledge of a willful wrong, committed against a litigant, to not approach the "higher" authority of such wrongdoing but to remain cloaked under the colour of law?

The actions of Mr. Smith along with the actions of those involved in the May 29, 1981 hearing and the conspiracy to deprive due process of law are directly coupled to the desire of the Respondents to maintain jur-

isdiction over this Petitioner, inasmuch as a court has not been re-established and a judge appointed by the Supreme Court of Ohio subsequent to the disqualification of the court on October 30, 1981, to protect the rights of this Petitioner.

Respondent Smith again compounds his criminal acts against the judicial codes and system in that he submitted his Answers to Suit in 82-CIV-695 and Motion to Dismiss, on Sanctions on the same day of September 1, 1982, after the Deposition was to have been ahd on August 30, 1982. However, this Petitioner had filed a Motion for a Protective Order on August 25, 1982, five days prior to the date of the deposition.

Yet, respondents continue to supply this ccurt with the false impression that this petitioner was willfully disobeying an order for deposition, when in fact, this Petitioner had never waived his rights to personal jurisdicton and those rights were ascerted under federal

law and established by the affidavit to Compel the Court that dismissal in this cause is severe and unjust as well as all claims of respondents to filing of appeals and arguments in support of cause. Petitioner has tried to lay out a roadmap as to where the evidence to support the cause appears in the record as well as to establish the acts of conspiracy of the judiciary by the various courts. In their haste to protect one of their own they have established a circus condition comparable to "Hey, Rube", which if not should be a disgrace to the legal profession. They have continued to annihilate the truth to such a degree that they throughly believe the results are the only truth, and now they are trying to use the same tactics before this Court, which can be ascertained through a thorough review of the Transcripts of the Causes and the records we have supplied to this court, to consider and that the markings of filing appear as factual documentation. This Petitioner further submits the Memoranda in Support recieved on

January 18, 1989 by this Court which is being submitted in accordance to Rule 33(.1)(d)(.2)(b)(2) which have been reproduced from the actual file. Please use the I.P. numbers as they appear as referral to the documents. Also please have the records certified in accordance with the I.P. Documents to the various courts.

The Petitioner respectfully submits to this Court and if he has in any way infringed upon the integrity of this Court he humbly apolgizes. It is just that after eight years of litigation, being bombarded by the mundane actions of Mr. Eklund, the inference by all respondents with regards to pro se litigants, and the fact that this Petitioner's property is still being held hostage makes this Petitioner's actons instinctive as opposed to respective.

Therefore, for all the foregoing reasons, this Court should sustain the petition for a Writ of Certiorari to the Ohio Supreme Court, as requested by this Petitioner.

Respectfully submitted,

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